

**OPINION**  
**43-57**

November 13, 1943 (OPINION)

INCOMPETENTS

RE: Residence

Since you were here I have given this matter considerable thought, especially with reference to the proposition as to whether the removal to another state of the parents of a minor inmate of the School for Feeble Minded would change the legal residence of such minor.

As you know, it held in the case of *In re Boise*, 11 N.W. 2d, page 80, that "in determining the right of a feeble-minded child to support under the public relief acts, the responsibility of the county is the same as that for an indigent or sound mind."

In the case of *Eddy County v. Wells County*, 11 N.W. 2d page 60, the court quotes from subsection 40, section 4 of chapter 97 of the Session Laws of 1933, as follows:

"Each minor whose parents, and each married woman whose husband has no residence in this state, who shall have resided one year continuously in the state, but not in any one county, shall have a settlement in the county in which he has longest resided within such year."

Since the place of residence of feeble-minded persons is to be determined in the same manner as that of an indigent of sound mind, it would seem to me that if a minor was actually a resident of a certain county at the time of his admission to the Grafton School, he would remain a resident of such county for institutional purposes until his discharge.

Applying this construction to the facts in connection with the inmates at the Grafton School from Ward County, it would be my opinion that such inmates who were residents at the time of commitment, would remain such residents, and the expense of care and treatment would be chargeable to the county from which they were committed.

It is clear that after commitment of a minor to an institution, such as the Grafton School of Feeble-minded, the parents no longer have any control or supervision, and would have no such control or supervision until such child has been discharged.

Although we have no special statute covering a situation of this kind, I am of the opinion that if the matter was brought before our courts, they would hold that the residence of the patient at the time of his commitment would continue to be his residence so long as he was receiving institutional care and was under the supervision and control of the institution.

As was suggested when you were here, the only way in which to get this matter clarified for the future, is to bring it to the attention of the Legislature at its next session and have a bill drawn which would clearly fix the residential status of persons, and particularly minors receiving institutional care from state institutions. With reference to minors committed from this state, but who, at the time of commitment are not residents of the state or of any county therein, a different rule would apply. In such cases, I am satisfied that unless it be established that they are residents of another state, and such state would accept them, they would be charges at large of this state, and the expense of their care and maintenance would properly be paid out of an appropriation for such purposes.

With reference to minors committed to institutions in this state and who, at the time of commitment were residents of a county of this state, I believe that subsection 4 of said section 4 of chapter 97 of the Session Laws of 1933, has some bearing, particularly the following portion:

"Every minor not emancipated and settled in his own right shall have the same settlement as the parent with whom he has last resided. The time during which a person has been in inmate of a hospital, poorhouse, jail, prison, or other public institution and each month during which he has received relief from the poor fund of any county, shall be excluded in determining the time of residence hereunder."

If, therefore, a minor is committed from a certain county of which his parents are residents and the parents thereafter remove to another county, I do not believe that it would change the residence of the minor, since he is being cared for in a public institution, and the time during which he is so cared for may not be counted in establishing a new residence. In other words, the parents cannot, by moving from one county to another county, change the residence of the minor who is institutionalized, so long as he is cared for in a public institution.

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